

Before the
FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF

VERIZON'S JOINT APPLICATION FOR)	WC DOCKET NO. 02-214
AUTHORIZATION TO PROVIDE)	
IN-REGION, INTERLATA SERVICE)	
IN THE STATE OF VIRGINIA)	

**COMMENTS OF NTELOS NETWORK INC.
and R&B NETWORK INC.**

NTELOS Network Inc. and R&B Network Inc. ("NTELOS") submit these comments in response to the Federal Communication Commission ("FCC" or "Commission") August 1, 2002 order in WC DOCKET NO. 02-214 as referenced above. NTELOS Network and R&B Network are competitive local exchange carriers (CLECs) that have been operational in Virginia since 1997 and are qualified to assist the Commission in verifying Verizon's compliance with the conditions set forth in 47 U.S.C. § 271 (c).

I. INTRODUCTION

Pursuant to the Telecommunications Act of 1996, Congress directed the former Bell Operating Companies (BOCs) to demonstrate compliance with certain market-opening requirements contained in Section 271 in order to be authorized to provide in-region, interLATA long distance service. It is the FCC's responsibility to determine whether the BOC has met the 14-point competitive checklist specified in Section 271(c)(2)(B) of the Act. The essence of the checklist is to ensure that the BOC has made its network available to competitors in a nondiscriminatory manner that irrevocably opens the local exchange market to competition.

The Act also contemplates that the state regulatory agency considers the 271 application and provides the FCC with its views. Verizon Virginia (“Verizon”) filed its application that it has met the checklist items in Virginia and the Virginia State Corporation Commission (“SCC”) initiated Case No. PUC-2002-00046 to consider Verizon’s request. After a lengthy proceeding that involved volumes of testimony and exhibits from both Verizon and numerous CLECs, the SCC’s Hearing Examiner in the case, Alexander F. Skirpan, Jr, issued a report on July 12, 2002 recommending that the SCC support Verizon’s requests for authority to provide in-region Interlata services in Virginia. Mr. Skirpan reported that Verizon currently complies with each of the fourteen (14) Checklist Items listed in 47 U.S.C. § 271 (c)(2)(B). However, Mr. Skirpan’s report concluded that the FCC should be advised that Verizon adversely affects competitors in two areas: 1) the ability for CLECs to obtain UNE DS-1 loops, and 2) the ability for CLECs to place directory listings in Verizon white and yellow pages. NTELOS strongly concurs in these two findings. Indeed, Verizon falls short in more areas than the two cited by Mr. Skirpan and we would like to provide the FCC with a description of the problems small, rural CLECs like NTELOS must face when interacting with Verizon as a competitor.

NTELOS Network Inc. and R&B Network Inc. (“NTELOS”) are facilities-based CLECs that have been providing service to rural communities since 1997. They are subsidiaries of NTELOS Inc., which has provided telecommunications services in the Shenandoah Valley for over 100 years. NTELOS is known for providing high quality, value-added communications services and personalized customer care. Its CLEC customer base has grown to almost 39,000 business lines by July 1, 2002. NTELOS’ CLEC markets include Martinsville, Danville, Lynchburg, Charlottesville, Roanoke, Lexington, Staunton, Blacksburg, and Radford. It also provides dial-up Internet access to over 70,000 customers and DSL to over 4,000 customers.

With a regulatory staff of only two people, who also have substantial operational responsibilities, NTELOS has nevertheless been as active as possible in the Verizon 271 process for Virginia. Despite the fact that it does not have the resources to hire consultants and engage in extensive legal procedures, NTELOS submitted testimony and appeared before the SCC hearing examiner in an effort to relate the difficulties it has experienced in dealing with Verizon. We did so because this proceeding is of vital importance to NTELOS. The decision that the FCC will make will determine whether NTELOS and other CLECs will be able to compete with Verizon in the future. As it stated in its testimony in the case before the Virginia SCC, NTELOS believes that Verizon has failed to meet its obligations to open its network sufficiently for NTELOS to effectively compete for the rural customers that are NTELOS' target market.

II. ENSURING CHECKLIST COMPLIANCE IS THE ONLY WAY IN WHICH RURAL CONSUMERS WILL ENJOY THE BENEFITS OF LOCAL COMPETITION

The complex, cumbersome and time-consuming processes and systems utilized by Verizon impede the ability of NTELOS to attract and serve customers. They cause unnecessary delay and add unnecessary expenses for CLECs and, in turn, negatively impact consumers. These issues are not isolated cases, but instead represent a pattern of performance issues experienced by all CLECs in Virginia that the FCC must address. NTELOS believes it is essential that the FCC consider the following issues in its assessment of Verizon's compliance with the checklist. NTELOS also believes that pending arbitration before the FCC that address UNE pricing in Virginia must also be settled before Verizon is granted 271 authority. Without final UNE pricing standards, CLECs in Virginia lack a true picture of their costs and cannot effectively create business plans to serve customers in the Commonwealth. This proceeding and

the pending arbitration issues are critical to ensuring that local competition in Virginia will prosper and that the benefits of local competition flow to consumers.

A. The Process by Which CLECs Obtain UNE Loops from Verizon Must be Streamlined to Comply with Check list Item 2

The cumbersome and expensive process currently employed by Verizon to determine if DS1 UNE loops are available to be ordered by CLECs received considerable attention during the state hearings on Verizon's application. Clear evidence was presented that the problem is not unique to NTELOS, but is a systemic problem affecting all CLECs and their customers. Pursuant to a burdensome three-step process, CLECs place an order for a DS1 UNE loop. Verizon rejects CLEC orders for DS1 loops where it does not have common equipment in the central office or at the customer premises and provides CLECs with a "no facilities" response.¹ CLECs must then place an order for special access. Once the special access order has been filled, the CLEC can then place an order that the special access line be converted to a UNE. This three-stage process, which takes at least 50 days to complete, is time consuming and expensive for CLECs and, more important, causes delay and uncertainty for consumers. As Verizon confirmed during the Virginia hearing, rates for special access are considerably higher than UNE rates. For example, Allegiance testified that ordering special access costs about \$1,100 more per year. NTELOS and other CLECs need DS1 loops in order to provide service to business customers that cannot be reached through their own fiber networks. Customers are likely to cancel service if the CLEC is not able to verify when installations will take place and service will be available. The problem is further exacerbated by the fact that the number of orders for DS1

¹ In fact, NTELOS routinely receives returned orders marked "no facilities." In addition, Verizon often delays service to NTELOS and its customers for failing to review supplemental change orders submitted by NTELOS. Orders are routinely queried even after a firm confirmation is received. These problems in the ordering system are experienced routinely by all CLECs and cause unnecessary delays in the provision of service. CLECs cannot compete effectively if they cannot guarantee that service will be provided at a date certain.

UNEs that are denied has increased very significantly in the past year. In addition, CLECs are not receiving timely notification that the UNEs are unavailable.

This three-step process prevents Verizon from providing nondiscriminatory access to UNEs. If CLECs do not have access to UNEs with any degree of certainty, the FCC cannot verify that this checklist item has been met. Alexander Skirpan, the hearing examiner in the Virginia 271 proceeding, strongly criticized Verizon's DS-1 UNE policies. On Page 171 of his July 12, 2002 report, Mr. Skirpan suggested that "The (Virginia) Commission should advise the FCC that Verizon Virginia's 'no construction' policy as applied in regards to DS-1 Loops has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with the pricing of unbundled network elements."²

NTELOS suggests that the FCC require Verizon to streamline its current process by permitting CLECs to indicate on their initial order that, if the UNE is not available, special access should be provided in the alternative and that conversion to a UNE is desired as soon as the CLEC is entitled to it. By allowing CLECs this one-step option on their initial order, CLECs will avoid unnecessary costs and consumers will avoid unnecessary delay in receiving service.³

B. Verizon Must Render Accurate Bills to CLECs to Comply with Checklist Item 2.

The billing for UNEs and other wholesale products is often inaccurate, causing CLECs to incur expenses and deploy scarce resources to review, research and dispute improper charges. Verizon's response to this problem seems to be that it has mechanized the process. It is important to understand that the mechanization of Verizon's billing system has not improved the

² While Verizon also made a vague reference to internal discussions to modify the three-step process, CLECs and their customer need greater certainty that a streamlined process will be implemented.

³ This option would be preferable for a small CLEC like NTELOS. Larger CLECs may prefer an option whereby they can place bulk orders in lieu of single provisioning. See, Transcript at 939.

rate of accuracy. Mechanizing an error-ridden system simply mechanizes the errors. And NTELOS' experience suggests that the errors are actually increasing. In its testimony, NTELOS noted that it identified approximately \$285,000 in overcharges in 2001. NTELOS has already been credited for almost \$1.2 million in inaccurate charges in 2002, which indicates that Verizon's performance in this area is getting worse. The SCC should require Verizon to improve its mechanization process or employ manual verification of bills to eliminate this problem.

C. Certainty Regarding UNE Pricing is Required to Ensure Compliance with Checklist Item 2.

NTELOS applauds the FCC for its July 17, 2002 rulings on non-pricing issues in Virginia interconnection agreement arbitrations affecting AT&T (CC Docket No. 00-251), Worldcom (CC Docket No. 00-218) and Cox Virginia Telecom (CC Docket No. 00-249). NTELOS is hopeful that the FCC will keep watch over Verizon to ensure that arbitration decisions are enforced.

With the Supreme Court only recently upholding the TELRIC pricing methodology, the FCC has not yet had an opportunity to render a decision on the arbitration cases affecting UNE pricing in Virginia. This uncertainty regarding the appropriate TELRIC rate for UNEs will only increase as more interconnection agreements expire and CLECs enter into new negotiations with Verizon. Based upon when its current agreement expires, NTELOS expects to soon open negotiations with Verizon. The FCC's decision on pricing of UNEs in Virginia will be binding in those negotiations. NTELOS recommends that the FCC expeditiously complete its deliberations on the pending pricing arbitrations.

D. Verizon Should Automatically Reclassify Wire Centers Based Upon Growth to Comply with Checklist Item 2.

UNE prices are based on density zones, with lower prices in high-density areas and higher prices in low-density areas. Verizon should be required to institute a plan to automatically reclassify wire centers based on growth. The current classifications are based upon 1996 data. They pose a particular hardship for rural CLECs and provide a strong disincentive to the development of rural competition. Verizon claims it does not have a methodology to alter the density zones without a full cost study for all loops in the Commonwealth. Yet Verizon is able to reclassify individual exchanges into higher retail rate groups based on growth. NTELOS would recommend that the FCC require Verizon to develop and institute a similar growth-based reclassification system for UNE density zones. Such a system will reflect the increased density experienced by communities in the past six years and so reduce prices for rural customers and encourage competition in rural areas.

E. Verizon's DSL Loop Pre-Qualification System Must be Streamlined to Comply with Checklist Item 4

The testimony presented in the Virginia 271 case indicates a serious problem experienced by all CLECs when ordering DSL loops from Verizon. Verizon's DSL loop pre-qualification system determines if a CLEC customer location qualifies for DSL. It is clear that the current system is unreliable, and rejects many loops that are suitable for DSL. If a CLEC receives a rejection notice, the CLEC must then pay for a manual qualification to verify the response. In its written submission in Virginia, NTELOS explained that in September 2001, it performed a study of 25 DSL requests submitted by NTELOS to Verizon. Verizon rejected eight of the 25 requests.

NTELOS placed DSL orders for those eight customers anyway and seven were successfully provisioned with DSL. Verizon incorrectly rejected 32 percent of the NTELOS orders.⁴

Since the initial query is very likely to be incorrect, a manual query process must be utilized on all rejections. This is especially onerous for customers in NTELOS' markets because Verizon has chosen not to offer DSL based broadband services in those areas. Therefore, these rural customers can only receive DSL services from NTELOS. Such a high rate of faulty pre-qualification rejections is unacceptable. NTELOS recommends that, at the very least, CLECs not be subject to any additional charges if the pre-qualification system incorrectly rejects DSL orders.

F. The Process for Ordering Dark Fiber Should be Clarified to Comply with Checklist Item 4.

The testimony presented in the Virginia proceeding accurately depicts the "Catch 22" situation that CLECs encounter when attempting to order dark fiber. It is nearly impossible for a CLEC to obtain any information regarding the location of dark fiber. Even if availability is confirmed, Verizon requires that the CLEC be collocated before ordering dark fiber. However, experience has shown that by the time the collocation request is fulfilled, the dark fiber no longer exists. This process must be modified to permit CLECs a fair opportunity to obtain dark fiber. NTELOS suggests that Verizon be required to expedite this process by providing accurate and timely information once a request regarding the availability of dark fiber is received. In addition, Verizon should reserve that dark fiber for the CLEC's use so that the fiber does not "disappear" as the CLEC makes collocation arrangements.⁵

⁴ In the Virginia proceeding, Verizon failed to rebut NTELOS' testimony on this point.

⁵ Verizon's response to the difficulty experienced by the CLECs in obtaining Dark Fiber is that the Bona Fide Request (BFR) process should be used. NTELOS' first hand experience with the process shows that BFR's are ineffective. There are no deadlines under which Verizon must process BFRs and CLECs routinely experience delays of many months, if they ever receive an answer at all.

G. Transport Costs between Networks Must be Equitably Shared to Ensure Compliance with Checklist Item 5.

CLECs who wish to interconnect with Verizon are required to build or lease facilities to the Verizon central office. The CLECs must deliver all calls from CLEC customers destined to Verizon customers to that point. Yet, Verizon will not deliver calls from its customers destined for CLEC customers to the CLEC switch. Consequently, the CLEC bears 100% of the transport costs between the two networks. This requirement adds substantial expense that impacts the CLEC's ability to compete. NTELOS does not believe that either state or federal law sanctions this one-sided transport arrangement. CLECs are forced to configure their networks to conform to the location of Verizon's switches in an effort to mitigate the transport costs, which may or may not reflect the most efficient configuration for its customers. NTELOS applauds the FCC's July 17, 2002 Virginia arbitration ruling that requires that Verizon is responsible for transport costs associated with delivery of its originated local traffic to the CLEC network. The Commission's decision will correct the inequity and transport costs will be shared equitably among the carriers. NTELOS strongly encourages the FCC to monitor Verizon's payment of transport costs going forward and to take necessary steps to make Verizon comply with this directive.

III. THE FCC SHOULD ADDRESS ISSUES THAT DIRECTLY IMPACT CONSUMERS – SUCH AS DOUBLE BILLING AND INCORRECT DIRECTORY LISTINGS

The issues NTELOS discussed in Section II above have a real, yet indirect, impact on consumers because those issues introduce unnecessary costs and delays for Verizon's competitors. But many of Verizon's failings have a very direct impact on consumers. First, Verizon continues to send bills to CLEC customers even after the customers have switched their service to a CLEC. This "double billing" became so pervasive that Verizon established a

“double billing” team to attempt to address the problem. However, as the testimony in the Virginia case demonstrated, the situation has improved but the problem has not been eliminated.

Under Verizon’s current process, Verizon does not discuss double billing issues directly with consumers, since they are no longer Verizon customers. Of course CLECs are not able to assist their new customers with Verizon bills. NTELOS believes that consumers would be better served if Verizon were directed to discuss its bills with consumers so that problems can be resolved quickly and consumers are not forced to contend with Verizon collection agents.

It appears that the difficulties in straightening out double billing are just part of the difficulties would-be CLEC customers experience when trying to leave Verizon. In its Virginia OSS Reply Declaration, Verizon states that it does not process a CLEC order for a new customer until Verizon completes its “negotiations” with the end user involved. When asked how long Verizon might hold up a CLEC order due to a contract dispute between Verizon and the end user, the OSS witnesses were unable to say. NTELOS has significant wireless operations, where customers – even customers with unexpired contracts – change providers every day. NTELOS would certainly like to prevent customers from obtaining a competitor’s service until any contractual dispute with NTELOS is resolved. But that is not the way a competitive market works. Verizon should simply not be permitted to hold up a CLEC’s order due to a legal or contractual dispute between Verizon and the end user.

The cumbersome process by which Verizon attempts to verify directory listings is another issue that directly impacts consumers. The Verizon Listing Verification Report (LVR), the tool provided by Verizon for CLECs to double check customer listing information before it is printed, routinely contains errors and, even when attempts to correct it are made, the directory listing itself may still be inaccurate. Of the 750 NTELOS listings on the Verizon LVR for the

May 31, 2002 Staunton, Virginia White Pages Directory, ten percent were inaccurate. Despite a yeoman's effort by NTELOS to verify that Verizon had correctly reproduced NTELOS' listings in the Staunton LVR, several NTELOS business customers were totally omitted from the Staunton telephone directory, despite the fact that we had received "confirmed" directory orders. Inaccurate listings are devastating to the success of the small businesses that make up the bulk of NTELOS' CLEC customer base. The directory listing process is so flawed that the Virginia Hearing Examiner on page 171 of his report stated "The Commission (SCC) should advise Verizon Virginia that it supports Cox's requested improvements to the Line Verification Report and the Verizon Virginia should reflect the Commission's support in the Change Management Process."

According to current procedures, CLECs do not have the ability to review a galley proof of the listing, as it will appear in the actual directory. CLECs should be provided with galley proofs instead of having to rely on the LVR as proof of what will appear in the telephone book. As a preferred alternative, NTELOS recommends that CLECs be permitted to deal directly with the directory publisher about their listings, rather than go through the Byzantine process now required by Verizon. Direct contact with the publisher may provide CLECs with a better opportunity to ensure that listings are published correctly. Verizon makes CLECs navigate a directory process that is fundamentally flawed, but other ILECs in Virginia simply send listings for inclusion in Verizon directories directly to Verizon and don't have to peruse an LVR. The ILEC is responsible for the accuracy of the listing; all Verizon does is publish it. CLECs are receiving both different and unequal treatment from ILECs when it comes to directory listing publication. NTELOS is intimately familiar with the ILEC directory process because R&B Telephone, an NTELOS subsidiary, submits directory listings to Verizon's publishing company

today for inclusion in the Roanoke, Virginia directory. R&B Telephone does not have to go through the process of checking a Verizon LVR.

IV. CONCLUSION

A large number of the over 200 CLECs that received authority to operate in Virginia are now out of business. While Verizon points to “poor business plans” as the culprit for CLEC exits, the day-to-day difficulty of navigating Verizon systems and processes impact the ability of CLECs to succeed. If NTELOS, a company with a rich tradition of over 100 years in communications, has difficulty bringing its services to end users in competitive markets, then it is obvious that these markets have not been effectively opened by the incumbent.

NTELOS has tried to be a constructive participant in the 271 proceeding. Where possible, we have recommended ways in which the FCC and the SCC can address the problems that have come to light. NTELOS urges the FCC to seize this opportunity to ensure a healthy competitive environment that will benefit the citizens of Virginia. The FCC should quickly rule on the pricing arbitrations in front of it and not give Verizon 271 authority until CLECs are assured of a stable, openly competitive environment.

Respectfully submitted,

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